

APPEAL NO. 031256
FILED JULY 8, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 28, 2003. The hearing officer decided that the attorney fee award was excessive and that the Application for Attorney's Fees (TWCC-152) order dated February 18, 2003, is superseded by the Decision and Order and that attorney's fees in the amount of zero are reasonable and necessary. The attorney has appealed, asserting lack of notice of the CCH and no opportunity to respond. He denies each and every allegation and asks the Appeals Panel to reverse the hearing officer's Decision and Order and remand the issue for a rehearing.

DECISION

Reversed and remanded.

The record reflected that the attorney failed to appear at the CCH. The hearing officer did not make a finding regarding good cause for the failure of the attorney to attend the CCH. Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997, indicates that "after a single failure to appear," the hearing officer does not have authority to preclude the nonattending party from presenting evidence. See Texas Workers' Compensation Commission Appeal No. 960464, decided April 22, 1996, which referred to a process in which a party was given 10 days to request an opportunity to show cause; the Appeals Panel in that case commented that another procedure would be for the hearing officer to "affirmatively set" a hearing date, with written notice to both parties, at which time cause could be considered and, regardless of the outcome concerning cause, evidence on the merits could be presented. Also see Texas Workers' Compensation Commission Appeal No. 970121, decided March 4, 1997, which applied the "single failure to appear" criterion in remanding for another hearing. That case held that another hearing should be set at which time either party may present evidence, regardless of whether the evidence relating to good cause is believed or not. The Appeals Panel has not held that should a party fail to appear for the next hearing set, after adequate notice has been given, the hearing officer could not then issue a decision. Texas Workers' Compensation Commission Appeal No. 021624, decided August 13, 2002.

There is no evidence that a "show cause letter" was sent to the attorney in this case or that another CCH was scheduled. We find our decisions in Appeal Nos. 960464 and 970121 to be controlling under the circumstances presented in the instant case, which does not involve repeated failures to appear at a scheduled CCH. In accordance with our precedent, the hearing officer should schedule another CCH, order the attorney to attend, afford him the opportunity to show good cause for not attending the CCH on April 28, 2003, and take evidence on the merits of the attorney's fee issue. In addition to remanding the case for consideration and development of the evidence on

the matter of good cause for not attending the CCH, we remand for further development of the evidence and for consideration of the disputed issue of attorney's fees on the basis of all of the evidence, including that which may be presented by the attorney at the CCH on remand, and whether or not the hearing officer finds good cause for the attorney's failure to appear at the April 28, 2003, CCH. See Appeal No. 021624, *supra*.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge